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SUPREME COURT OF THE UNITED STATES

No. 94-1039

ROY ROMER, GOVERNOR OF COLORADO, et al.,
PETITIONERS v. RICHARD G. EVANS et al.
on writ of certiorari to the supreme court
of Colorado
[May 20, 1996]

Justice Kennedy delivered the opinion of the Court.

One century ago, the first Justice Harlan admonished this Court that the Constitution -neither knows nor tolerates classes among citizens.- Plessy v. Ferguson, 163 U. S. 537, 559 (1896) (dissenting opinion). Unheeded then, those words now are understood to state a commitment to the law's neutrality where the rights of persons are at stake. The Equal Protection Clause enforces this principle and today requires us to hold invalid a provision of Colorado's Constitution.

I

The enactment challenged in this case is an amendment to the Constitution of the State of Colorado, adopted in a 1992 statewide referendum. The parties and the state courts refer to it as -Amendment 2,- its designation when submitted to the voters. The impetus for the amendment and the contentious campaign that preceded its adoption came in large part from ordinances that had been passed in various Colorado municipalities. For example, the cities of Aspen and Boulder and the City and County of Denver each had enacted ordinances which banned discrimination in many transactions and activities, including housing, employment, education, public accommodations, and health and welfare services. Denver Rev. Municipal Code, Art. IV 28-91 to 28-116 (1991); Aspen Municipal Code 13-98 (1977); Boulder Rev. Code 12-1-1 to 12-1-11 (1987). What gave rise to the statewide controversy was the protection the ordinances afforded to persons discriminated against by reason of their sexual orientation. See Boulder Rev. Code 12-1-1 (defining -sexual orientation- as -the choice of sexual partners, i.e., bisexual, homosexual or heterosexual-); Denver Rev. Municipal Code, Art. IV 28-92 (defining -sexual orientation- as -[t]he status of an individual as to his or her heterosexuality, homosexuality or bisexuality-). Amendment 2 repeals these ordinances to the extent they prohibit discrimination on the basis of -homosexual, lesbian or bisexual orientation, conduct, practices or relationships.- Colo. Const., Art. II, 30b.

Yet Amendment 2, in explicit terms, does more than repeal or rescind these provisions. It prohibits all legislative, executive or judicial action at any level of state or local government designed to protect the named class, a class we shall refer to as homosexual persons or

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gays and lesbians. The amendment reads:
-No Protected Status Based on Homosexual, Lesbian, or Bisexual Orientation. Neither the State of Colorado, through any of its branches or departments, nor any of its agencies, political subdivisions, municipalities or school districts, shall enact, adopt or enforce any statute, regulation, ordinance or policy whereby homosexual, lesbian or bisexual orientation, conduct, practices or relationships shall constitute or otherwise be the basis of or entitle any person or class of persons to have or claim any minority status, quota preferences, protected status or claim of discrimination. This Section of the Constitution shall be in all respects self-executing.- Ibid.

Soon after Amendment 2 was adopted, this litigation to declare its invalidity and enjoin its enforcement was commenced in the District Court for the City and County of Denver. Among the plaintiffs (respondents here) were homosexual persons, some of them government employees. They alleged that enforcement of Amendment 2 would subject them to immediate and substantial risk of discrimination on the basis of their sexual orientation. Other plaintiffs (also respondents here) included the three municipalities whose ordinances we have cited and certain other governmental entities which had acted earlier to protect homosexuals from discrimination but would be prevented by Amendment 2 from continuing to do so. Although Governor Romer had been on record opposing the adoption of Amendment 2, he was named in his official capacity as a defendant, together with the Colorado Attorney General and the State of Colorado.

The trial court granted a preliminary injunction to stay enforcement of Amendment 2, and an appeal was taken to the Supreme Court of Colorado. Sustaining the interim injunction and remanding the case for further proceedings, the State Supreme Court held that Amendment 2 was subject to strict scrutiny under the Fourteenth Amendment because it infringed the fundamental right of gays and lesbians to participate in the political process. Evans v. Romer, 854 P. 2d 1270 (Colo. 1993) (Evans I). To reach this conclusion, the state court relied on our voting rights cases, e.g., Reynolds v. Sims, 377 U. S. 533 (1964); Carrington v. Rash, 380 U. S. 89 (1965); Harper v. Virginia Bd. of Elections, 383 U. S. 663 (1966); Williams v. Rhodes, 393 U. S. 23 (1968), and on our precedents involving discriminatory restructuring of governmental decisionmaking, see, e.g., Hunter v. Erickson, 393 U. S. 385 (1969); Reitman v. Mulkey, 387 U. S. 369 (1967); Washington v. Seattle School Dist. No. 1, 458 U. S. 457 (1982); Gordon v. Lance, 403 U. S. 1 (1971). On remand, the State advanced various arguments in an effort to show that Amendment 2 was narrowly tailored to serve compelling interests, but the trial court found none sufficient. It enjoined enforcement of Amendment 2, and the Supreme Court of Colorado, in a second opinion, affirmed the ruling. Evans v. Romer, 882 P. 2d 1335 (Colo. 1994) (Evans II). We granted certiorari and now affirm the judgment, but on a rationale different from that adopted by the State

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Supreme Court.

II

The State's principal argument in defense of Amendment 2 is that it puts gays and lesbians in the same position as all other persons. So, the State says, the measure does no more than deny homosexuals special rights. This reading of the amendment's language is implausible. We rely not upon our own interpretation of the amendment but upon the authoritative construction of Colorado's Supreme Court. The state court, deeming it unnecessary to determine the full extent of the amendment's reach, found it invalid even on a modest reading of its implications. The critical discussion of the amendment, set out in Evans I, is as follows:

-The immediate objective of Amendment 2 is, at a minimum, to repeal existing statutes, regulations, ordinances, and policies of state and local entities that barred discrimination based on sexual orientation. See Aspen, Colo., Mun. Code 13-98 (1977) (prohibiting discrimination in employment, housing and public accommodations on the basis of sexual orientation); Boulder, Colo., Rev. Code 12-1-2 to -4 (1987) (same); Denver, Colo., Rev. Mun. Code art. IV, 28-91 to -116 (1991) (same); Executive Order No. D0035 (December 10, 1990) (prohibiting employment discrimination for `all state employees, classified and exempt' on the basis of sexual orientation); Colorado Insurance Code, 10-3-1104, 4A C. R. S. (1992 Supp.) (forbidding health insurance providers from determining insurability and premiums based on an applicant's, a beneficiary's, or an insured's sexual orientation); and various provisions prohibiting discrimination based on sexual orientation at state colleges.26

-26Metropolitan State College of Denver prohibits college sponsored social clubs from discriminating in membership on the basis of sexual orientation and Colorado State University has an antidiscrimination policy which encompasses sexual orientation.

-The `ultimate effect' of Amendment 2 is to prohibit any governmental entity from adopting similar, or more protective statutes, regulations, ordinances, or policies in the future unless the state constitution is first amended to permit such measures.- 854 P. 2d, at 1284-1285, and n. 26.

Sweeping and comprehensive is the change in legal status effected by this law. So much is evident from the ordinances that the Colorado Supreme Court declared would be void by operation of Amendment 2. Homosexuals, by state decree, are put in a solitary class with respect to transactions and relations in both the private and governmental spheres. The amendment withdraws from homosexuals, but no others, specific legal protection from the injuries caused by discrimination, and it forbids reinstatement of these laws and policies.

The change that Amendment 2 works in the legal status of gays and lesbians in the private sphere is far-reaching, both on its own terms and when considered in light of the structure and operation of modern anti-discrimination laws. That structure is well illustrated

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by contemporary statutes and ordinances prohibiting discrimination by providers of public accommodations. -At common law, innkeepers, smiths, and others who `made profession of a public employment,' were prohibited from refusing, without good reason, to serve a customer.- Hurley v. Irish-American Gay, Lesbian and Bisexual Group of Boston, Inc., 515 U. S. ___, ___ (1995) (slip op., at 13). The duty was a general one and did not specify protection for particular groups. The common law rules, however, proved insufficient in many instances, and it was settled early that the Fourteenth Amendment did not give Congress a general power to prohibit discrimination in public accommodations, Civil Rights Cases, 109 U. S. 3, 25 (1883). In consequence, most States have chosen to counter discrimination by enacting detailed statutory schemes. See, e.g., S. D. Codified Laws 20-13-10, 20-13-22, 20-13-23 (1995); Iowa Code 216.6-216.8 (1994); Okla. Stat., Tit. 25, 1302, 1402 (1987); 43 Pa. Cons. Stat. 953, 955 (Supp. 1995); N. J. Stat. Ann. 10:5-3, 10:5-4 (West Supp. 1995); N. H. Rev. Stat. Ann. 354-A:7, 354-A:10, 354-A:17 (1995); Minn. Stat. 363.03 (1991 and Supp. 1995).

Colorado's state and municipal laws typify this emerging tradition of statutory protection and follow a consistent pattern. The laws first enumerate the persons or entities subject to a duty not to discriminate. The list goes well beyond the entities covered by the common law. The Boulder ordinance, for example, has a comprehensive definition of entities deemed places of -public accommodation.- They include -any place of business engaged in any sales to the general public and any place that offers services, facilities, privileges, or advantages to the general public or that receives financial support through solicitation of the general public or through governmental subsidy of any kind.- Boulder Rev. Code 12-1-1(j) (1987). The Denver ordinance is of similar breadth, applying, for example, to hotels, restaurants, hospitals, dental clinics, theaters, banks, common carriers, travel and insurance agencies, and -shops and stores dealing with goods or services of any kind,- Denver Rev. Municipal Code, Art. IV, 28-92.

These statutes and ordinances also depart from the common law by enumerating the groups or persons within their ambit of protection. Enumeration is the essential device used to make the duty not to discriminate concrete and to provide guidance for those who must comply. In following this approach, Colorado's state and local governments have not limited anti-discrimination laws to groups that have so far been given the protection of heightened equal protection scrutiny under our cases. See, e.g., J. E. B. v. Alabama ex rel. T. B., 511 U. S. __, __ (1994) (slip op., at 8) (sex); Lalli v. Lalli, 439 U. S. 259, 265 (1978) (illegitimacy); McLaughlin v. Florida, 379 U. S. 184, 191-192 (1964) (race); Oyama v. California, 332 U. S. 633 (1948) (ancestry). Rather, they set forth an extensive catalogue of traits which cannot be the basis for discrimination, including age, military status, marital status, pregnancy, parenthood, custody of a minor child, political affiliation, physical or mental disability of an individual or of his

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or her associates--and, in recent times, sexual orientation. Aspen Municipal Code 13-98(a)(1) (1977); Boulder Rev. Code 12-1-1 to 12-1-4 (1987); Denver Rev. Municipal Code, Art. IV, 28-92 to 28-119 (1991); Colo. Rev. Stat. 24-34-401 to 24-34-707 (1988 and Supp. 1995).

Amendment 2 bars homosexuals from securing protection against the injuries that these public-accommodations laws address. That in itself is a severe consequence, but there is more. Amendment 2, in addition, nullifies specific legal protections for this targeted class in all transactions in housing, sale of real estate, insurance, health and welfare services, private education, and employment. See, e.g., Aspen Municipal Code 13-98(b), (c) (1977); Boulder Rev. Code 12-1-2, 12-1-3 (1987); Denver Rev. Municipal Code, Art. IV 28-93 to 28-95, 28-97 (1991).

Not confined to the private sphere, Amendment 2 also operates to repeal and forbid all laws or policies providing specific protection for gays or lesbians from discrimination by every level of Colorado government. The State Supreme Court cited two examples of protections in the governmental sphere that are now rescinded and may not be reintroduced. The first is Colorado Executive Order D0035 (1990), which forbids employment discrimination against -`all state employees, classified and exempt' on the basis of sexual orientation.- 854 P. 2d, at 1284. Also repealed, and now forbidden, are -various provisions prohibiting discrimination based on sexual orientation at state colleges.- Id., at 1284, 1285. The repeal of these measures and the prohibition against their future reenactment demonstrates that Amendment 2 has the same force and effect in Colorado's governmental sector as it does elsewhere and that it applies to policies as well as ordinary legislation.

Amendment 2's reach may not be limited to specific laws passed for the benefit of gays and lesbians. It is a fair, if not necessary, inference from the broad language of the amendment that it deprives gays and lesbians even of the protection of general laws and policies that prohibit arbitrary discrimination in governmental and private settings. See, e.g., Colo. Rev. Stat. 24-4-106(7) (1988) (agency action subject to judicial review under arbitrary and capricious standard); 18-8-405 (making it a criminal offense for a public servant knowingly, arbitrarily or capriciously to refrain from performing a duty imposed on him by law); 10-3-1104(1)(f) (prohibiting -unfair discrimination- in insurance); 4 Colo. Code of Regulations 801-1, Policy 11-1 (1983) (prohibiting discrimination in state employment on grounds of specified traits or -other non-merit factor-). At some point in the systematic administration of these laws, an official must determine whether homosexuality is an arbitrary and thus forbidden basis for decision. Yet a decision to that effect would itself amount to a policy prohibiting discrimination on the basis of homosexuality, and so would appear to be no more valid under Amendment 2 than the specific prohibitions against discrimination the state court held invalid.

If this consequence follows from Amendment 2, as its

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broad language suggests, it would compound the constitutional difficulties the law creates. The state court did not decide whether the amendment has this effect, however, and neither need we. In the course of rejecting the argument that Amendment 2 is intended to conserve resources to fight discrimination against suspect classes, the Colorado Supreme Court made the limited observation that the amendment is not intended to affect many anti-discrimination laws protecting non-suspect classes, Romer II, 882 P. 2d at 1346, n. 9. In our view that does not resolve the issue. In any event, even if, as we doubt, homosexuals could find some safe harbor in laws of general application, we cannot accept the view that Amendment 2's prohibition on specific legal protections does no more than deprive homosexuals of special rights. To the contrary, the amendment imposes a special disability upon those persons alone. Homosexuals are forbidden the safeguards that others enjoy or may seek without constraint. They can obtain specific protection against discrimination only by enlisting the citizenry of Colorado to amend the state constitution or perhaps, on the State's view, by trying to pass helpful laws of general applicability. This is so no matter how local or discrete the harm, no matter how public and widespread the injury. We find nothing special in the protections Amendment 2 withholds. These are protections taken for granted by most people either because they already have them or do not need them; these are protections against exclusion from an almost limitless number of transactions and endeavors that constitute ordinary civic life in a free society.

III

The Fourteenth Amendment's promise that no person shall be denied the equal protection of the laws must coexist with the practical necessity that most legislation classifies for one purpose or another, with resulting disadvantage to various groups or persons. Personnel Administrator of Mass. v. Feeney, 442 U. S. 256, 271-272 (1979); F. S. Royster Guano Co. v. Virginia, 253 U. S. 412, 415 (1920). We have attempted to reconcile the principle with the reality by stating that, if a law neither burdens a fundamental right nor targets a suspect class, we will uphold the legislative classification so long as it bears a rational relation to some legitimate end. See, e.g., Heller v. Doe, 509 U. S. ___, ___ (1993) (slip op., at 6).

Amendment 2 fails, indeed defies, even this conventional inquiry. First, the amendment has the peculiar property of imposing a broad and undifferentiated disability on a single named group, an exceptional and, as we shall explain, invalid form of legislation. Second, its sheer breadth is so discontinuous with the reasons offered for it that the amendment seems inexplicable by anything but animus toward the class that it affects; it lacks a rational relationship to legitimate state interests.

Taking the first point, even in the ordinary equal protection case calling for the most deferential of standards, we insist on knowing the relation between the classification adopted and the object to be attained. The search for the link between classification and

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objective gives substance to the Equal Protection Clause; it provides guidance and discipline for the legislature, which is entitled to know what sorts of laws it can pass; and it marks the limits of our own authority. In the ordinary case, a law will be sustained if it can be said to advance a legitimate government interest, even if the law seems unwise or works to the disadvantage of a particular group, or if the rationale for it seems tenuous. See New Orleans v. Dukes, 427 U. S. 297 (1976) (tourism benefits justified classification favoring pushcart vendors of certain longevity); Williamson v. Lee Optical of Okla., Inc., 348 U. S. 483 (1955) (assumed health concerns justified law favoring optometrists over opticians); Railway Express Agency, Inc. v. New York, 336 U. S. 106 (1949) (potential traffic hazards justified exemption of vehicles advertising the owner's products from general advertising ban); Kotch v. Board of River Port Pilot Comm'rs for Port of New Orleans, 330 U. S. 552 (1947) (licensing scheme that disfavored persons unrelated to current river boat pilots justified by possible efficiency and safety benefits of a closely knit pilotage system). The laws challenged in the cases just cited were narrow enough in scope and grounded in a sufficient factual context for us to ascertain that there existed some relation between the classification and the purpose it served. By requiring that the classification bear a rational relationship to an independent and legitimate legislative end, we ensure that classifications are not drawn for the purpose of disadvantaging the group burdened by the law. See United States Railroad Retirement Bd. v. Fritz, 449 U. S. 166, 181 (1980) (Stevens, J., concurring) (-If the adverse impact on the disfavored class is an apparent aim of the legislature, its impartiality would be suspect.-).

Amendment 2 confounds this normal process of judicial review. It is at once too narrow and too broad. It identifies persons by a single trait and then denies them protection across the board. The resulting disqualification of a class of persons from the right to seek specific protection from the law is unprecedented in our jurisprudence. The absence of precedent for Amendment 2 is itself instructive; -[d]iscriminations of an unusual character especially suggest careful consideration to determine whether they are obnoxious to the constitutional provision.- Louisville Gas & Elec. Co. v. Coleman, 277 U. S. 32, 37-38 (1928).

It is not within our constitutional tradition to enact laws of this sort. Central both to the idea of the rule of law and to our own Constitution's guarantee of equal protection is the principle that government and each of its parts remain open on impartial terms to all who seek its assistance. -`Equal protection of the laws is not achieved through indiscriminate imposition of inequalities.'- Sweatt v. Painter, 339 U. S. 629, 635 (1950) (quoting Shelley v. Kraemer, 334 U. S. 1, 22 (1948)). Respect for this principle explains why laws singling out a certain class of citizens for disfavored legal status or general hardships are rare. A law declaring that in general it shall be more difficult for one group of citizens than for all others to seek aid from the government is itself a denial of equal protection of the laws in

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the most literal sense. -The guaranty of `equal protection of the laws is a pledge of the protection of equal laws.'- Skinner v. Oklahoma ex rel. Williamson, 316 U. S. 535, 541 (1942) (quoting Yick Wo v. Hopkins, 118 U. S. 356, 369 (1886)).

Davis v. Beason, 133 U. S. 333 (1890), not cited by the parties but relied upon by the dissent, is not evidence that Amendment 2 is within our constitutional tradition, and any reliance upon it as authority for sustaining the amendment is misplaced. In Davis, the Court approved an Idaho territorial statute denying Mormons, polygamists, and advocates of polygamy the right to vote and to hold office because, as the Court construed the statute, it -simply excludes from the privilege of voting, or of holding any office of honor, trust or profit, those who have been convicted of certain offences, and those who advocate a practical resistance to the laws of the Territory and justify and approve the commission of crimes forbidden by it.- Id., at 347. To the extent Davis held that persons advocating a certain practice may be denied the right to vote, it is no longer good law. Brandenburg v. Ohio, 395 U. S. 444 (1969) (per curiam). To the extent it held that the groups designated in the statute may be deprived of the right to vote because of their status, its ruling could not stand without surviving strict scrutiny, a most doubtful outcome. Dunn v. Blumstein, 405 U. S. 330, 337 (1972); cf. United States v. Brown, 381 U. S. 437 (1965); United States v. Robel, 389 U. S. 258 (1967). To the extent Davis held that a convicted felon may be denied the right to vote, its holding is not implicated by our decision and is unexceptionable. See Richardson v. Ramirez, 418 U. S. 24 (1974).

A second and related point is that laws of the kind now before us raise the inevitable inference that the disadvantage imposed is born of animosity toward the class of persons affected. -[I]f the constitutional conception of `equal protection of the laws' means anything, it must at the very least mean that a bare . . . desire to harm a politically unpopular group cannot constitute a legitimate governmental interest.- Department of Agriculture v. Moreno, 413 U. S. 528, 534 (1973). Even laws enacted for broad and ambitious purposes often can be explained by reference to legitimate public policies which justify the incidental disadvantages they impose on certain persons. Amendment 2, however, in making a general announcement that gays and lesbians shall not have any particular protections from the law, inflicts on them immediate, continuing, and real injuries that outrun and belie any legitimate justifications that may be claimed for it. We conclude that, in addition to the far-reaching deficiencies of Amendment 2 that we have noted, the principles it offends, in another sense, are conventional and venerable; a law must bear a rational relationship to a legitimate governmental purpose, Kadrmas v. Dickinson Public Schools, 487 U. S. 450, 462 (1988), and Amendment 2 does not.

The primary rationale the State offers for Amendment 2 is respect for other citizens' freedom of association, and in particular the liberties of landlords or employers who have personal or religious objections to homosexual-

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ity. Colorado also cites its interest in conserving resources to fight discrimination against other groups. The breadth of the Amendment is so far removed from these particular justifications that we find it impossible to credit them. We cannot say that Amendment 2 is directed to any identifiable legitimate purpose or discrete objective. It is a status-based enactment divorced from any factual context from which we could discern a relationship to legitimate state interests; it is a classification of persons undertaken for its own sake, something the Equal Protection Clause does not permit. -[C]lass legislation . . . [is] obnoxious to the prohibitions of the Fourteenth Amendment . . . .- Civil Rights Cases, 109 U. S., at 24.

We must conclude that Amendment 2 classifies homosexuals not to further a proper legislative end but to make them unequal to everyone else. This Colorado cannot do. A State cannot so deem a class of persons a stranger to its laws. Amendment 2 violates the Equal Protection Clause, and the judgment of the Supreme Court of Colorado is affirmed.

It is so ordered.